

(2013) 04 MAD CK 0095
In the Madras High Court
Case No : Writ Petition (MD) No. 5550 of 2011

V. Balakrishnan

APPELLANT

Vs

The Additional Director of Police and The Commandant

RESPONDENT

Date of Decision : 19-04-2013

Acts Referred:

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 25(b)

Citation : (2013) 04 MAD CK 0095

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Mahalingam, for the Appellant; G. Muthukannan, Government Advocate, for the Respondent

Judgement

T.S. Sivagnanam, J.—Heard the learned counsel appearing for the parties. In this writ petition, the petitioner has sought for issuance of Writ

of Certiorarified Mandamus, to quash the order dated 19.12.2009 passed by the first respondent and for a direction to accord appropriate

seniority to the petitioner in accordance Rule 25(b) of the Tamil Nadu Police Subordinate Service Rules and grant consequential promotion as

Inspector of Police with effect from 2006 and Inspector of Police (Adjutant) with effect from 2009.

2. The petitioner was recruited as Grade II Police Constable in the Tamil Nadu Police on 02.04.1981. Thereafter, by the order passed by the

second respondent dated 05.04.1983, the petitioner and four other police constables were posted to the Radio and Telecommunication group to

fill up the existing vacancies with effect from 05.04.1983 F.N. and their posting were ordered without prejudice to their being under Radio and

Telecommunication basic course in signal school, Regimental Centre. After the petitioner was posted in the Radio and Telecommunication group,

he cleared third class operator test during 1983, second class operator test during 1985 and first class operator test during 1987.

3. The petitioner was promoted as Lance Naik on 12.03.1987 and as a Grade I Police Constable with effect from 13.08.1994 and as a Head

Constable with effect from 10.07.2000 while the petitioner was in the Police Telecommunication Branch (PTB).

4. By order dated 17.11.2005, passed by the Deputy Inspector General of Police, (PTB) the petitioner was repatriated to his parent battalion

namely, the Tamil Nadu Special Police, VI Battalion, Madurai, on administrative grounds and he was informed that he will not be taken back in

Police Telecommunication Branch under any circumstances in future and in the said order, it was further mentioned that the Commandant of the

Tamil Nadu Special Police, VI Battalion, Madurai was requested to fix the seniority of the petitioner on par with his immediate junior appointed in

his district (Batch-mate) and revise his pay accordingly.

5. On such repatriation, the petitioner submitted a representation on 28.11.2005 stating that he may be accorded due seniority and consequent

promotion on joining the parent Battalion. Since the representation was not considered, the petitioner moved this Court by filing W.P. (MD) No.

629 of 2007 for a direction to consider the petitioner's representation, dated 23.11.2006. The said writ petition was withdrawn by the petitioner

with a liberty to file a fresh writ petition and the same accordingly was dismissed on 29.04.2008 reserving the liberty to the petitioner. Thereafter,

since the petitioner's representation was not considered, he filed another writ petition in W.P. (MD) No. 7405 of 2009 praying for a direction

upon the first respondent to consider the petitioner's case for promotion to the post of Sub Inspector of Police and thereafter, as Inspector of

Police and thereafter, as Inspector of Police (Adjunct) with effect from the date on which the petitioner's batch-mates were promoted. This Court

by order dated 04.03.2009 directed the first respondent to consider the petitioner's representation dated 11.06.2009 on merits and in accordance

with law.

6. Thereafter, the first respondent by order dated 19.12.2009 informed the

petitioner that the petitioner having left the Tamil Nadu Special Police, VI Battalion, Madurai to the Police Telecommunication Branch in the year 1989 and he having been sent back to the parent unit only 2005 after completion of 16 years, on administrative reasons, his promotion cannot be granted on par with Mr. M.G. Murugesan (RT) since the said Murugesan was considered for promotion at that time of drawal of "C" list for Police Constables (RT) fit for promotion as Naiks for the year 2006-2007 only and his services as Naik were regularised with effect from 18.3.2006 and subsequently, Murugesan name was included in the "C" list of Naik (RT) fit for promotion as Havildar for the year 2008-2009 and his services were regularised as Havildar with effect from 18.03.2008 as laid down in the Tamil Nadu Special Police Subordinate Service Rules.

7. Further, the first respondent by placing reliance on G.O.Ms. No. 72, P & amp; AR Department, dated 28.01.1983 stated that all applications from the Government employees for revision of their seniority in a post should be submitted within three years from the date of appointment to a category to the authority concerned and applications received after the period of three years will be rejected. Further reliance was placed on Rule 9 of the General Rules for Tamil Nadu State Subordinate Service Rules stating that a member of a service who has been appointed to another service outside to his regular line shall not be permitted to hold membership in the second service beyond five years, if he is to be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified for such promotion or appointment unless he puts in a fresh service for a minimum period of one year in his post in the former service on reversion from the second service. The said order, dated 19.12.2009 is impugned in this writ petition.

8. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate for the respondents and perused the counter affidavit filed by the respondents.

9. In fact, in the counter affidavit, the stand taken in the impugned order has been reiterated. Firstly, it has to be pointed that the respondents have committed serious error by making a reference to the General Rules without taking note of the fact that the services of the petitioner are governed by the Special Rules for Tamil Nadu Police Subordinate Service. In this regard, it

is necessary to refer to Rule 25(b) of the Rules which deals with seniority. For the purpose of this case, it would be relevant to quote Sub Rule (b) of Rule 25, which reads as follows:

25(b) The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall

not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred, shall be determined with

reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule seniority

shall be determined by the appointing authority.

10. On a perusal of the above Rule, it is clear that if a person is transferred from one class or category of the service to another class or category

carrying the same pay which shall not be treated as first appointment to the latter for the purpose of seniority and the seniority of a person so

transferred, shall be determined with reference to the rank in the class or category from which he was transferred. Therefore, to state that on

account of the petitioner being posted in the Police Telecommunication Branch, he would lose his entire past service while on repatriation to the

battalion is a stand which has been taken contrary to the service rules.

11. In fact, an identical question came up for consideration before the Hon''ble First Bench of this Court in W.A. No. 500 of 2008. The said

appeal was preferred by the State of Tamil Nadu against the order passed in W.P. No. 27036 of 2005, dated 13.04.2006. The writ petition was

filed to include the name of the writ petitioners in the list of Head Constables (Armed Reserve) fit for promotion as Sub Inspectors Police (Armed

Reserve). The Department took a stand that those writ petitioners sought for transfer from the Tamil Nadu Special Police, IX Battalion to District

Armed Reserve and the claim for the previous service cannot be counted. Learned single Judge who heard the writ petition rejected the contention

raised by the Department and allowed the writ petition. Challenging the same, the writ appeal was filed. The Hon''ble First Bench taking note of

Rule 25(b) of the Special Rules for Tamil Nadu Police Subordinate Service confirmed the order passed in the writ petition. At this stage, it would

be beneficial to quote the entire order passed by the Hon''ble Division Bench which reads as follows:

Heard the learned Government Pleader for the appellants. This appeal has been filed by the State of Tamil Nadu, represented by the Home

Secretary, seeking to impugn an order dated 13.04.2006 passed by the learned Judge of a writ Court. The writ petition was filed by the first

respondent for a mandamus directing the Deputy Inspector General of Police, Tirunelveli Range (the fourth appellant herein) to include the name of

the writ petitioner in the list of Head Constable (Armed Reserve) fit for promotion as Sub Inspector of Police (Armed Reserve) by granting him

seniority in terms of G.O. 844, Home Department, dated 03.06.1997 by placing him above respondents 2 to 15 herein, in the seniority list of

Head Constables. The learned Judge of the writ court allowed the said prayer.

2. While the said order was impugned by the learned Government Pleader for the State, he submitted that as the first respondent on his own

sought for a transfer from the Tamil Nadu Special Police IX Battalion to the District Armed Reserve, his seniority in the previous service cannot be

counted. Learned Government Pleader further submitted that the direction of the learned Judge of the writ court to count the seniority of the first

respondent in the previous service is contrary to the relevant administrative instructions which will hold the field in the absence of a rule. In support

of his submission, he refers to paragraph 3 of his reply affidavit, which runs as follows:

It is submitted that the applicant was enlisted as Gr. II PC in TSP VII Bn on 01.04.1981. He was transferred to T.S.P.III Bn. Manimuthar in the

same rank and joined on 13.08.1985 and then to T.S.P.IX Bn. Manimuthar on 04.07.1987. While he was working in T.S.P.IX Bn, he was

transferred to District A.R. at his option foregoing his seniority and promotion gained in T.S.P. Battalions and reported in Ramnad District A.R. on

22.12.1993 as Gr. II P.C. Then at his request, he was transferred to Tirunelveli District A.R. and reported for duty on 07.11.1994 as Gr. II P.C.

3. Today, Rule 25(b) of the Special Rules for Tamil Nadu Police Subordinate Service Rules, has been placed before us. Sub-rules (b) (c) and (d)

have come by way of amendment. Sub-rule (b), rule does not support the contention of the learned Government Pleader. The said rule is set out

below:-

25(b) The transfer of a person from one class or category of the service to

another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred, shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule seniority shall be determined by the appointing authority.

On a perusal of the said rule, it appears that the contention raised by the learned Government Pleader cannot be sustained and the finding of the learned Judge of the writ court has to be upheld inasmuch as by sheer transfer from the Tamil Nadu Special Police to the Armed Reserve, the first respondent cannot be said to have foregone his seniority. Therefore, the order of the learned Judge of the writ court has to be carried out by the State. It may be noted here that before the learned Judge of the writ court, despite notice, the private respondents, viz., respondents 2 to 15 herein, did not choose to appear. This has been recorded by the learned Judge in paragraph 3 of his order. In that view of the matter, we are passing the aforesaid order.

4. The writ appeal is thus dismissed. There will be no order as to costs. Consequently, M.P. No. 1 of 2008 is closed.

12. Thus, the decision of the Hon"ble Division Bench confirming the order passed in the writ petition in the said case applies with full force to the case on hand and this is a converse case where the petitioner on being transferred to the Police Telecommunication Branch during 1983 to fill up the existing vacancies has been repatriated back to the sixth battalion by order dated 17.11.2005. In the said order, it has been clearly mentioned that the petitioner's seniority has to be fixed on par with his immediate junior appointed in his District (batch-mate) and revised his pay accordingly.

If the same is not done, the petitioner's 16 years of service shall be effaced and such contingency has not been contemplated under the Rules.

Furthermore, the order itself is a repatriation order which means the petitioner should be entitled to all the benefits by virtue of the services rendered by him in the Police Telecommunication Branch and the seniority in the parent battalion has to be maintained. At this stage, it would be relevant to point out that the petitioner was posted in the Telecommunication Branch during 1983 and while he was working in the said branch, he

was granted three promotions, firstly for Lance Naik during 1987, in 1994 as Grade I Police Constable and as Head Constable on 10.07.2000

and all these three promotions, were based on the date of entry into the police force. Therefore, on repatriation, it cannot be taken that all his past

services stands forfeiture and he should be treated as a fresh entrant. Thus, the respondent has failed to take note of the relevant rule which has

been interpreted by the Hon''ble Division Bench of this Court in the decision quoted above. For all the above reasons, the impugned order calls for

interference. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the respondents to refix

the petitioner's seniority in the Tamil Nadu Special Police, VI Battalion, Madurai, by taking note of his entire service from the date of joining the

police force i.e., on 02.04.1981 and he may be appropriately placed in the seniority list above his immediate junior and consequently, the petitioner

shall be entitled for further promotion based on such seniority. Such orders shall be passed by the respondents within a period of three months

from the date of receipt of a copy of this order. No costs.